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Counsel for Defendant

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JOSHUA CROSS, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

HALEON US HOLDINGS LLC,

Defendant.

CASE NO. 2:24-CV-09325-MCS-PVC

**DEFENDANT'S NOTICE OF
MOTION AND MOTION TO
DISMISS PLAINTIFF'S
AMENDED COMPLAINT**

Complaint Filed: October 29, 2024
Judge: Hon. Mark C. Scarsi
Hearing Date: March 3, 2025
Time: 9:00 a.m.
Courtroom: 7C

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on Monday, March 3, 2025 at 9:00 a.m., or as soon thereafter as this matter may be heard in Courtroom 7C of the above captioned Court, located at 350 West 1st Street, 7th Floor, Los Angeles, California 90012, Defendant Haleon US Holdings LLC, will and hereby does move pursuant to Federal Rule of Civil Procedure 12(b)(6) for an Order dismissing with prejudice the Amended Complaint filed by Joshua Cross (Plaintiff) based on the following grounds:

1. Federal law preempts Plaintiff's state-law claims because they seek to impose requirements different from, in addition to, or otherwise not identical with an applicable FDA monograph. The Antigingivitis Monograph deals squarely with the Parodontax product and its active ingredient, and Plaintiff's state-law claims seeking to "prohibit[] labeling that is not prohibited under federal law" are expressly preempted by Section 379r. *Wiltz v. Chattem, Inc.*, 2015 WL 3862368, at *1 (C.D. Cal. May 8, 2015).

2. No reasonable consumer would be misled by the Parodontax label. Plaintiff challenges one product claim that the label does not even make, and another that he admits is true. False advertising claims cannot rely on "unreasonable or fanciful interpretations of labels." *Moore v. Trader Joe's Co.*, 4 F.4th 874, 882-83 (9th Cir. 2021). Where—as here—claims fail "to establish how the label is false or misleading when read as a whole," *Steiner v. Vi-Jon Inc.*, 2024 WL 1181002, at *5 (N.D. Cal. Mar. 18, 2024), dismissal is warranted.

3. Plaintiff's unjust enrichment claim is legally deficient for at least two additional reasons. First, in California, "[t]here is no cause of action for unjust enrichment." *Clancy v. Bromley Tea Co.*, 308 F.R.D. 564, 576 (N.D. Cal. Aug. 9, 2013) (quoting *Myers-Armstrong v. Actavis Totowa, LLC*, 382 Fed. Appx. 545, 548 (9th Cir. 2010)). Second, unjust enrichment is unavailable to Plaintiff because it is an equitable claim, and the Amended Complaint fails to plead that there is no adequate remedy at law. *See In re Samsung Galaxy Smartphone Mktg. & Sales Pracs. Litig.*, 2020 WL 7664461, at *12 (N.D. Cal. Dec. 24, 2020).

4. Plaintiff's implied warranty claim fails for at least two additional reasons. First, "privity of contract is required to sustain an implied warranty claim in California." *Paramount Farms Int'l LLC v. Ventilex B.V.*, 500 Fed. Appx. 586, 588 (9th Cir. 2012). Here, there is no such privity. Second, the implied warranty of merchantability requires only a "minimum level of quality." *Birdsong v. Apple, Inc.*, 590 F.3d 955, 958 (9th Cir. 2009). Plaintiff does not and cannot allege that Parodontax lacks minimal quality.

This Motion is based on the Memorandum of Points and Authorities, and on such oral argument and evidence that the Court may consider at the hearing. This Motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on November 14, 2024; November 27, 2024; and December 30, 2024.

Dated: January 3, 2025

KIRKLAND & ELLIS LLP

By: /s/ Robyn E. Bladow

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SIGNATURE CERTIFICATION

Pursuant to Local Rule 5-4.3.4, I hereby attest that all the other signatories listed and on whose behalf the filing is submitted, concur in the filing's content and have authorized this filing.

Dated: January 3, 2025

/s/ Robyn E. Bladow

Robyn E. Bladow

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2025 the within document was filed with the Clerk of the Court using CM/ECF which will send notification of such filing to the attorneys of record in this case.

/s/ Robyn E. Bladow
Robyn E. Bladow